

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COUNCIL OF THE CITY OF SAINT PAUL

In the Matter of the Adverse Action against  
the Taxicab Driver License held by David A.  
McIntosh for the City of St. Paul

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge M. Kevin Snell on October 3, 2008, at the Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota. The record closed on October 13, 2008, upon the expiration of the time for Licensee to respond to the City's default motion.

Rachel Tierney, Assistant St. Paul City Attorney, 15 West Kellogg Boulevard, Suite 400, St. Paul, Minnesota 55102, appeared at the hearing as attorney for the City of St. Paul. The Licensee, David A. McIntosh, did not appear in person or by counsel.

**STATEMENT OF THE ISSUE**

The issue is whether the St. Paul City Council should take the adverse action of denying the renewal of Licensee's taxi driver license, as recommended by the Department of Safety and Inspections.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Licensee has had a Taxicab Driver license issued by the City of St. Paul since August 6, 2001.<sup>1</sup>
2. On April 3, 2008, Licensee was convicted, under Minn. Stat. § 609.324, subd. 3, of engaging in prostitution while operating a taxicab on September 7, 2006.<sup>2</sup>
3. On August 14, 2008, Licensee submitted his Taxicab Driver Renewal License Application to the City of St. Paul Department of Safety and Inspections.<sup>3</sup>

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<sup>1</sup> Exhibit 1, testimony of Christine Rozek, Deputy Director, St. Paul Department of Safety and Inspections.

<sup>2</sup> Exs. 5, 6.

<sup>3</sup> Ex. 2.

4. On September 5, 2008, the City Attorney of the City of St. Paul issued a Notice of Intent to Deny License ("Denial Notice") to Licensee, sent to the address on his driver's license and on his Taxicab Driver Renewal License Application.<sup>4</sup>

5. On September 11, 2008, Licensee appealed, in writing, the Denial Notice and requested to be heard by an Administrative Law Judge.<sup>5</sup>

6. On September 12, 2008, a copy of the Notice of Administrative Hearing was sent via first class mail to Licensee, David A. McIntosh, at his address as it appears from the Affidavit of Service by United States Mail on file herein.<sup>6</sup>

7. The Licensee did not request a continuance or any other relief prior to the hearing, and did not appear at the hearing.

8. The Licensee did not request any relief after the hearing.

9. The Notice of Administrative Hearing contained the following informational warning:

If you fail to appear at the hearing, your ability to challenge the allegations will be forfeited and the allegations against you which have been stated earlier in this notice may be taken as true.

10. Because Licensee failed to appear at the hearing, he is in default.

11. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Administrative Hearing or any other pleading may be taken as true and incorporated by reference into these Findings of Fact.

12. The allegations contained in the Notice of Intent to Deny License and the Notice of Administrative Hearing dated September 12, 2008 are deemed to be and are taken as true and correct, and are incorporated by reference.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the St. Paul City Council have jurisdiction in this matter based upon Minn. Stat. § 14.55, the City of St. Paul Legislative Code § 310.05, and Minn. R. 1400.8505 to 1400.8612.

2. The City of St. Paul gave proper notice of the hearing in this matter, and has fulfilled all relevant substantive and procedural requirements of statute, code, or rule. This matter is, therefore, properly before the St. Paul City Council and the Administrative Law Judge.

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<sup>4</sup> Ex. 7.

<sup>5</sup> Ex. 8.

<sup>6</sup> Ex. 9.

3. Pursuant to section 376.16(e)(4)(c) of the City of St. Paul Legislative Code, an individual is ineligible to renew a Taxicab Driver license if he or she has engaged in prostitution within three (3) years preceding renewal.

4. The City of St. Paul has authority to suspend or revoke a license and to impose penalties for violation of applicable statutes and rules based upon sections 310.06 and 376.16(j) of the City of St. Paul Legislative Code.

5. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of, and the issues set out in the Notice of Administrative Hearing or other pleading may be taken as true or deemed proved without further evidence. The Licensee is in default herein as a result of the failure to appear at the hearing.

6. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions, and as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Conclusions the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that: the City Council of the City of St. Paul take adverse action against the Taxicab Driver license of David A. McIntosh.

Dated: October 27, 2008

s/M. Kevin Snell

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M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

### **NOTICE**

This Report is a recommendation and not a final decision. The St. Paul City Council will make the final decision after reviewing the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation. Under Section 310.05 of the St. Paul Legislative Code, the City Council's final decision shall not be made until the Report has been made available to the parties to the proceeding and the parties have been provided an opportunity to present oral or written arguments alleging error on the part of the Administrative Law Judge in the application of the law or the interpretation of the facts and an opportunity to present argument relating to any recommended adverse action. The interested parties should contact the St. Paul City Council through Ms. Shari Moore, City Clerk, 310 City Hall, Saint Paul, Minnesota 55102, to ascertain the procedure for presenting argument to the Council.

**M. K. S.**